

STATE OF MICHIGAN
COURT OF APPEALS

WATERVIEW RESOLUTION CORPORATION,
f/k/a COLONIAL PACIFIC LEASING
CORPORATION,

UNPUBLISHED
May 9, 2006

Plaintiff-Appellee,

v

MAXI MOVER X-PRESS, INC., MAXI MOVER
TRUCK BROKERAGE, INC., and BEVERLY
MULDER,

No. 259461
Ottawa Circuit Court
LC No. 99-035187-CZ

Defendants-Appellants.

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court order granting summary disposition to plaintiff following a denial of defendants' motion to adjourn. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's denial of a motion to adjourn for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). A trial court abuses its discretion when it acts "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959); see also *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The burden of proof is on the party asserting the abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1983). The asserting party must also show that prejudice resulted from the abuse of discretion. *In re Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000).

This relatively uncomplicated collections case arose from the default by defendants on separate 1996 leases on two semi-trailers. The case was filed in 1999 and not resolved until 2004, despite there being little dispute on the central issues in the case that the leases were defaulted, and the monies were owed pursuant to the lease agreements. The only issues remaining at the time defendants moved for adjournment related to a possible reduction in damages for storage fees, and failure to mitigate damages by not picking up the trailers in a timely manner.

At trial, defendant Mulder, who had recently fired her attorney, moved to adjourn because she did not have an attorney or the case files. The trial court denied her motion. When questioned by the court, defendants presented no evidence at trial regarding mitigation or storage fees. Therefore, the trial court granted summary disposition to plaintiff for the full amount owed of \$165,547.39.

On appeal, defendants argue that the trial court abused its discretion in denying the motion to adjourn. We disagree.

Defendants argue that because their attorney withdrew on November 8, only three days before the trial, they did not have sufficient time to move to adjourn before the November 11 trial. However, defendants knew about their attorney's withdrawal long before the November 8 withdrawal hearing. First, Mulder acknowledged that she fired the attorney when questioned by the court at the November 11 trial. Since she knew that she fired him, the November 8 withdrawal was something she should have anticipated and prepared for. Second, Mulder's attorney filed for withdrawal on October 28, 2004, two weeks before the trial, and he provided notice to her. Thus, the November 8 withdrawal was no surprise to her. If Mulder was acting diligently, she could have moved to adjourn any time between receiving notice of the withdrawal, even up to the time of the withdrawal hearing. She chose not to attend or be represented at the withdrawal hearing, and did not move to adjourn until the trial on November 11. She did not act to adjourn the trial "as soon as possible," as required by MCR 2.503(C)(1), after ascertaining that she would be without an attorney.

Defendants also argue that they were unable to gain access to the files because the attorney had placed a lien on them, and they had just become aware of that fact. However, at the withdrawal hearing, the attorney indicated that he unsuccessfully attempted to contact Mulder numerous times via telephone regarding the files, and that his calls were never returned. Thus, the court could properly conclude that Mulder failed to make a diligent effort to get the files in a timely manner contrary to the requirements in MCR 2.503(C)(2).

Defendants also fail to provide the necessary evidence of prejudice from the denial of the adjournment. The asserting party must show that prejudice resulted from the abuse of discretion. *Snider, supra* at 421. Defendants assert that they could have provided evidence at trial regarding mitigation of damages and storage fees for the trailers if they had the case files. However, defendants have the files but failed to provide evidence either below via a motion for reconsideration or relief from judgment or on appeal via a motion to remand supported by an appropriate affidavit. The burden is on the defendants to prove that the trial court abused its discretion. *Jackson, supra* at 28. Defendants do not meet this burden.

Defendants also make a separate argument that the corporate defendants, Maxi-Mover X-Press and Maxi Mover Truck Brokerage, were required to be represented by an attorney, and therefore the trial court erred in not adjourning until the corporate defendants were properly represented. We note that this does not affect the court's decision regarding Mulder personally. Further, defendants present no authority for the proposition that the rule that a corporation must be represented by an attorney precludes the court from proceeding with an action against a corporation where the corporation fails to secure counsel.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot